

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN DAVID BATTAGLIA

Petitioner,

VS.

RICK THALER, Director
Texas Department of Criminal Justice,
Correctional Institutions Division

Respondent.

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NO. 3-09-CV-1904-B-BD

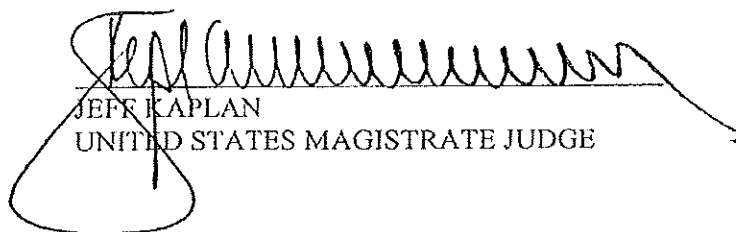
ORDER

Petitioner John David Battaglia has filed a motion for stay and abeyance so he can exhaust certain claims raised in a *pro se* supplemental application for writ of habeas corpus. After considering the motion, the court declines to decide at this stage of the proceeding whether a stay is appropriate under *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005). Instead, the court will consider the issue in connection with its review of the claims raised by petitioner in his *pro se* supplemental writ, which will be decided in due course.

Accordingly, petitioner's motion for a stay and abeyance [Doc. #60] is denied without prejudice. The court will determine whether this action should be stayed so petitioner can return to state court to exhaust his new claims when it reviews the case on the merits. No further briefing by the parties on the stay issue is required or desired.

SO ORDERED.

DATED: June 16, 2011.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE